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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH**

<b>In re:</b>  <b>RALPH DAVID BRINTON</b>  <b>Debtor</b>	<b>Case No.: 16-27945 JTM</b>  <b>Chapter: 7</b>
<b>JAMES WULFENSTEIN and WULFENSTEIN CONSTRUCTION, INC., ET AL</b>  <b>v.</b>  <b>RALPH DAVID BRINTON</b>	<b>ADVERSARY PROC. 17-02041 JTM</b>

**MOTION TO DISMISS FOR LACK OF JURISDICTION**

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Debtor/Defendant, Ralph David Brinton (“Debtor” or “Defendant”), by and through his counsel of record, hereby files this Motion to Dismiss the above-captioned Adversary Proceeding for lack of subject-matter jurisdiction and of personal jurisdiction, pursuant to Federal Rules of Bankruptcy Procedures, Rule 7012, which incorporates F. R. Civ. P. This Motion is made on the following grounds:.

1. Ralph David Brinton acting *pro se* filed a Chapter 13 petition on September 8, 2016 (“the Petition Date”). The Plaintiffs in the above-captioned Adversary Proceeding filed a complaint for non-dischargeability against Ralph David Brinton on April 4, 2017.
2. On the Petition Date, the Debtor had debts in excess of the jurisdictional amounts set forth in 11 U.S.C. §109(e) as stated in the Chapter 13 Trustee’s December 7, 2016, Motion to Dismiss (Docket No. 27).
3. On December 28, 2016, Wade Frey, James Wulfenstein, Wulfenstein Construction, Inc. (the “Wulfenstein Group”) filed their Objection to the Motion to Dismiss by and through their attorney James Anderson of the law firm of Clyde Snow & Sessions.
4. On January 4, 2017, the hearing on the Motion to Dismiss was held before the Court. There appeared at the hearing Tami Willardson for the Chapter 13 Trustee and James Anderson of Clyde Snow & Sessions for the Wulfenstein Group. The Debtor, acting *pro se*, did not make an appearance. The Court accepted the allegations set forth in the Trustee’s Motion to Dismiss, including the allegation that the Debtor’s debts exceeded the jurisdictional limits of 11 U.S.C. §109(e). The Court also accepted without the proffer of evidence the representations of James Anderson, attorney for the Wulfenstein Group. The Court then ruled that the Chapter 13 case be converted to one under Chapter 7.
5. On January 5, 2017, the Court entered its Order converting the Chapter 13 case to one under Chapter 7.
6. Since January 5, 2017, the case has proceeded under Chapter 7.

#### LEGAL GROUNDS FOR THE MOTION TO DISMISS

7. The above-captioned Court is the United States Bankruptcy Court for the District of Utah, a unit of the United States District Court for the District of Utah pursuant to 28 U.S.C. § 151.
8. The United States District Court for the District of Utah is a court of limited jurisdiction pursuant to 28 U.S.C. § 1331.
9. The jurisdiction of the United States Bankruptcy Court for the District of Utah is further limited pursuant to 28 U.S.C. §157 (for the proposition that federal bankruptcy courts are courts of limited jurisdiction see generally *Stern v. Marshall*, 564 U.S. 462 (2011)).
10. The filing of a voluntary Chapter 13 petition under 11 U.S.C. § 303 is a core matter within the subject-matter jurisdiction of a bankruptcy court if and only if the voluntary petition is filed by a “debtor” within the meaning of 11 U.S.C. § 101(13) and § 109(e).
11. In the instant case, Ralph David Brinton was not a “debtor” within the meaning of 11 U.S.C. § 109(e) because he was never an “individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200.”
12. Because he was never a “debtor” within the meaning of 11 U.S.C. § 109(e), he was never “a person . . . concerning which a case under this title [had] been commenced” within the meaning of 11 U.S.C. § 101(13).
13. Consequently, there never existed a case under title 11 within the meaning of 28 U.S.C. § 157 over which the Bankruptcy Court had subject-matter jurisdiction to invoke the authority of 11 U.S.C. § 1307 to issue its January 5, 2017, Order of conversion of the Debtor’s Chapter 13 case to a case under Chapter 7.

14. The only subject-matter jurisdiction the Bankruptcy Court had was the subject-matter jurisdiction to determine whether it had the requisite subject-matter jurisdiction to convert Mr. Brinton's case. In the case of *Basso v. Utah Power and Light*, 496 F.2d 906, at 909 (10<sup>th</sup> Cir. 1974), the Court held that "since the courts of the United States are courts of limited jurisdiction, there is a presumption against its existence. *City of Lawton, Okla. v. Chapman*, 257 F.2d 601 (10<sup>th</sup> Cir. 1958)."
15. The *Basso* Court further held: "If the parties do not raise the question of lack of jurisdiction, it is the duty of the federal court to determine the matter *sua sponte*. *Atlas Life Insurance Co. v. W. I. Southern, Inc.*, 306 U.S. 563, 59 S. Ct. 657, 83 L. Ed. 987 (1939); *Continental Mining and Milling Co. v. Migliaccio*, 16 F.R.D. 217 (D.C. Utah 1954)" (*Id.*).
16. In the case of *Pioneer Bank of Longmont v. Rasmussen (In re Rasmussen)*, 888 F.2d 703, at 705 (1989), the 10<sup>th</sup> Circuit Court of Appeals referred to the debtor's failure to meet the debt limits of § 109(e) as jurisdictional:
- Mr. Rasmussen originally was not able to meet the jurisdictional limits of a Chapter 13 proceeding because his unsecured debts totaled more than \$100,000 in contravention of 11 U.S.C. § 109(e).
17. In *Davis v. Mather et al.* 239 B.R. 573, at 577-78 (10<sup>th</sup> Cir. B.A.P., 1999), the Bankruptcy Appellate Panel, following the 10<sup>th</sup> Circuit in *Rasmussen*, twice referred to the debt limits of 11 U.S.C. § 109(e) as jurisdictional:

. . . the debtor was originally unable to meet the jurisdictional limits of a Chapter 13 proceeding because his unsecured debt exceeded the statutory limits.

. . . .

In the prior case, the Debtor was unable to meet the jurisdictional limits of a Chapter 13 proceeding because his unsecured debts totaled more than \$250,000, in contravention of § 109(e).

18. Relevant to the instant case are the three Chapter 13 cases filed by Christopher Black Cannon before the above-captioned Court. Cannon's first Chapter 13 case (12-26945) was dismissed on July 18, 2012 for failure to comply with 11 U.S.C. § 521(a)(1).
19. Cannon's second Chapter 13 case (13-24366) was dismissed by J. William Thomas Thurman's Order of Dismissal entered on November 7, 2013, for the reasons set forth in J. Thurman's Memorandum Decision of December 11, 2013, which determined that Cannon's debts exceeded the § 109(e) statutory limits as a result held that the case could be either be converted voluntarily or else dismissed:

Having concluded that analysis, the sole task remaining for the Court is to determine the appropriate outcome for the Debtor's case. PNC requests that the Debtor's case be dismissed, while the Trustee has asked this Court to dismiss the case and annul the petition. When faced with a debtor who is ineligible under § 109(e), courts have, "with apparent unanimity, concluded that . . . the case should be either **voluntarily** converted or dismissed." [note omitted] This conclusion is based on a number of policy considerations. For example, if a court chose to declare a petition void *ab initio* because the debtor exceeded the debt limits of § 109(e), a debtor arguably would have no remedy against a creditor who took action in violation of the automatic stay while the debtor's case was pending. In addition, where a court strikes a debtor's petition rather than dismisses his case, the debtor arguably could file repeatedly without becoming subject to the 30-day limitation of § 362(c)(3) in a subsequent case filed within the following year. Therefore, the court will dismiss Mr. Cannon's Case, but will not annul the petition.

20. J. Thurman's Order and Memorandum Decision in Cannon's case number 13-24366 were affirmed on appeal to the United District Court for the District of Utah by the Decision and Final Order of Dismissal of J. Robert J. Shelby on October 23, 2014, thus creating a binding precedent on the instant Court in favor of dismissal or voluntary conversion.
21. Cannon's third Chapter 13 case (15-20545) was filed on January 15, 2015, and dismissed by this Court on April 14, 2015. Cannon appealed the dismissal to the United States District Court for the District of Utah, which affirmed the dismissal by a decision handed

down by J. David Sam on November 19, 2015, which referred to the debt limits of § 109(e) as jurisdictional:

The current case is Appellant's third Chapter 13 case filed in less than three years (since May 2012). Appellant's two prior Chapter 13 cases were also dismissed by the Bankruptcy Court. The Bankruptcy Court dismissed the present Chapter 13 case, holding that Appellant exceeded the jurisdictional debt limits.

22. The Bankruptcy Court's limited subject-matter jurisdiction in the instant case is identical to a federal District Court's limited diversity jurisdiction under 28 U.S.C. § 1332. In the case of *Juana and Gerald Martin v. Franklin Capital Corporation and Century-National Insurance Company*, 251 F.3d 1284, 1293-94 (10<sup>th</sup> Cir., 2001), the Martins sued Franklin and Century-National in a New Mexico State Court. Invoking diversity jurisdiction, Century removed the case to federal court with the consent of Franklin. The Martins filed a motion for remand back to the state court for lack of subject matter jurisdiction on grounds that the Martins' claims did not meet the \$50,000 amount-in-controversy requirement for diversity jurisdiction. The federal district court denied the Martins' motion for remand, denied their motion for class certification, and granted Century's motion to dismiss for failure to state a claim. This left the Martins with an individual case against Franklin in the federal district court. In its order denying the motion to remand, the federal district court stated that "it does not appear to a legal certainty that the [Martins' claims] are for less than \$50,000 and I conclude that they are colorable for the purposes of conferring jurisdiction." On appeal the 10<sup>th</sup> Circuit Court held that because the requirement of a claim in excess of \$50,000 had not been met, the federal court lacked diversity jurisdiction under 28 U.S.C. § 1332. This same analysis should apply to subject-matter jurisdiction under 28 U.S.C. 1331, to wit: Given that Mr. Brinton's debts

exceeded the statutory limits for a Chapter 13 case thus rendering Mr. Brinton not a “debtor” within the meaning of 11 U.S.C. § 109(e) and therefore not a debtor in a “case” within the meaning of 11 U.S.C. § 101(13), the Bankruptcy Court, in the absence of the Debtor’s consent, could exercise only the limited jurisdiction to dismiss the Chapter 13 for lack of subject-matter jurisdiction or to convert the case with the Debtor’s consent; but this Court was without subject-matter jurisdiction to enter its Order converting the case to one under Chapter 7 without the Debtor’s consent.

#### ARGUMENT

23. A bankruptcy case requires at minimum the existence of a court, a party, and an interest in controversy. Section 109(e) is jurisdictional for the reason that, absent a bankruptcy petitioner with debts in amounts that fall within the 109(e) limits, there is no debtor before the court.
24. With no debtor, there is no debtor's estate under 11 U.S.C. §541 to be administered by a trustee; there are no debts to be discharged, no disputed interests to be determined, no exemptions to be recognized and protected, no legally cognizable causes to be adjudicated or settled, **including the above-captioned Adversary Proceeding..**
25. In sum, with no debtor there is no case, no subject matter over which the bankruptcy court can exercise its limited jurisdiction.
26. No debtor means no case means no subject matter jurisdiction.
27. A Chapter 13 petition filed by or against a debtor whose debts exceed the limits of § 109(e) does not invoke the bankruptcy courts jurisdiction any more than a bankruptcy petition filed prior to the expiration periods set forth in 11 U.S.C. 727(a)(8) and (9) or 11 U.S.C. § 1328(f)(1) and (2).

**28. Because there was never a case “arising under title 11” before the Court, there can be no case “arising in or related to a case under title 11” that would invoke the subject matter jurisdiction of this Court pursuant to 28 U.S.C. § 157(a); therefore, the above-captioned Adversary Proceeding must be dismissed for lack of subject-matter and personal jurisdiction.**

**RELIEF REQUESTED**

For these reasons, the Debtor respectfully requests the Court to determine that it lacked subject-matter and personal jurisdiction of the above-captioned Adversary Proceeding and to dismiss the case for lack of jurisdiction.

August 31, 2017

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Paul Toscano, attorney for Ralph David Brinton

**CERTIFICATE OF SERVICE – BY NOTICE OF ELECTRONIC FILING (CM/ECF)**

I hereby certify that on August 31, 2017, I electronically filed the foregoing **Defendant’s Motion to Dismiss for Lack of Jurisdiction** with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF user and will be served through the CM/ECF system:

- James W. Anderson    jwa@clydesnow.com, jritchie@clydesnow.com

August 31, 2017

\_\_\_\_\_/S/\_\_\_\_\_  
Paul Toscano, attorney for Defendant